

## **Assembly Bill No. 1492**

### **CHAPTER 694**

An act to amend Section 51257 of, and to add Section 51250 to, the Government Code, relating to agricultural land conservation.

[Approved by Governor October 8, 2003. Filed with  
Secretary of State October 9, 2003.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1492, Laird. Agricultural land conservation.

The Williamson Act, until January 1, 2004, in order to facilitate a lot line adjustment, authorizes parties to mutually agree to rescind a land conservation contract or contracts and simultaneously enter into a new contract or contracts covering the adjustment if the board of supervisors or city council makes specified findings.

This bill would extend that authorization to January 1, 2009.

Existing law authorizes the cancellation of an agricultural land conservation contract upon request of the landowner if the board of supervisors or city council makes specified findings and upon the payment of a cancellation fee. Existing law also provides principles of compatibility by which a board or council may approve compatible uses on contracted lands.

This bill would provide, with certain exceptions, that any commercial, industrial, or residential building constructed on a parcel subject to an agricultural land conservation contract that is not permitted by the contract or by local uniform rules or ordinances and is not related to an agricultural use or compatible use is a material breach of contract. This bill would require the Department of Conservation to notify the city or county administering the contract of a possible breach. The bill would require the city or county upon notification by the department, or upon its discovery of a possible breach, to determine the validity of the contract and whether the breach is material. The bill would require the city or county to notify the landowner and the department of its determination. The bill would permit the landowner to eliminate the conditions that resulted in the material breach. If the condition is not eliminated the city or county shall schedule the hearing and give notice of the hearing to the landowner and the department. The bill would require the city or county, upon its determination, after a public hearing, that a material breach exists, to order the landowner to eliminate the condition that resulted in the material breach or to assess a monetary penalty and to cause to be recorded a certificate of contract termination

by breach. The bill would also require the recording of a lien against the property, based on the value of the construction or improvements, that would be payable to the county treasurer. By imposing these duties on local government officers this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 51250 is added to the Government Code, to read:

51250. (a) The purpose of this section is to identify certain structures that constitute material breaches of contract under this chapter and to provide an alternate remedy to a contract cancellation petition by the landowner. Accordingly, this remedy is in addition to any other available remedies for breach of contract. Except as expressly provided in this section, this section is not intended to change the existing land use decisionmaking and enforcement authority of cities and counties including the authority conferred upon them by this chapter to administer agricultural preserves and contracts.

(b) For purposes of this section, a breach is material if, on a parcel under contract, both of the following conditions are met:

(1) A commercial, industrial, or residential building is constructed that is not allowed by this chapter or the contract, local uniform rules or ordinances consistent with the provisions of this chapter, and that is not related to an agricultural use or compatible use.

(2) The total area of all of the building or buildings likely causing the breach exceeds 2,500 square feet for either of the following:

(A) All property subject to any contract or all contiguous property subject to a contract or contracts owned by the same landowner or landowners on January 1, 2004.

(B) All property subject to a contract entered into after January 1, 2004, covering property not subject to a contract on January 1, 2004.



For purposes of this subdivision any additional parcels not specified in the legal description that accompanied the contract, as it existed prior to January 1, 2003, including any parcel created or recognized within an existing contract by subdivision, deed, partition, or, pursuant to Section 66499.35, by certificate of compliance, shall not increase the limitation of this subdivision.

(c) The department shall notify the city or county if the department discovers a possible breach.

(d) The city or county shall, upon notification by the department or upon discovery by the city or county of a possible material breach, determine if there is a valid contract and if it is likely that the breach is material. In its investigation, the city or county shall endeavor to contact the landowner or his or her representative to learn the landowner's explanation of the facts and circumstances related to the possible material breach.

(e) Within 10 days of determining that it is likely that a material breach exists, the city or county shall notify the landowner and the department by certified mail, return receipt requested. This notice shall include the reasons for the determination and a copy of the contract.

(f) Within 60 days of receiving the notice, the landowner or his or her representative may notify the city or the county that the landowner intends to eliminate the conditions that resulted in the material breach within 60 days. If the landowner eliminates the conditions that resulted in the material breach within 60 days, the city or county shall take no further action under this section with respect to the building at issue. If the landowner notifies the city or county of the intention to eliminate the conditions but fails to do so, the city or county shall proceed with the hearing required in subdivision (g).

(g) The city or county shall schedule a hearing no more than 120 days after the notice is provided to the landowner as required in subdivision (e). The city or county shall give notice of the public hearing by certified mail, return receipt requested to the landowner and the department at least 30 days prior to the hearing. The city or county shall give notice of the public hearing by first-class mail to every owner of land under contract, any portion of which is situated within one mile of the exterior boundary of the contracted parcel on which the likely material breach exists. The city or county shall also give published notice pursuant to Section 6061. The notice shall include the date, time, and place of the public hearing. Not less than five days before the hearing, the department may request that the city or county provide the department, at the department's expense, a recorded transcript of the hearing not more than 30 days after the hearing.



(h) At the public hearing, the city or county shall consider any oral or written testimony and then determine if a material breach exists.

(i) If the city or county determines that a material breach exists, the city or county shall do one of the following:

(1) Order the landowner to eliminate the conditions that resulted in the material breach within 60 days.

(2) Assess the monetary penalty pursuant to subdivision (j) and terminate the contract on that portion of the contracted parcel that has been made incompatible by the material breach.

If the landowner disagrees with the determination, he or she may pursue any other legal remedy that is available.

(j) The monetary penalty shall be 25 percent of the unrestricted fair market value of the land rendered incompatible by the breach, plus 25 percent of the value of the incompatible building and any related improvements on the contracted land. The basis for the valuation of the penalty shall be an independent appraisal of the current unrestricted fair market value of the property that is subject to the contract and affected by the incompatible use or uses, and a valuation of any buildings and any related improvements within the area affected by the incompatible use or uses. If the city or county determines that equity would permit a lesser penalty, the city or county, the landowner, and the department may negotiate a reduction in the penalty based on the factors specified in subdivision (k), but a reduction in the penalty may not exceed one-half of the penalty. If negotiations are to be held, the city or county shall provide the department 15 days' notice before the first negotiation. If the department chooses not to be a negotiator or fails to send a negotiator, the city or county and the landowner may negotiate the penalty.

(k) In determining the amount of a lesser penalty, the negotiators shall consider:

(1) The nature, circumstances, extent, and gravity of the material breach.

(2) Whether the landowner's actions were willful, knowing, or negligent with respect to the material breach.

(3) The landowner's culpability in contributing to the material breach and whether the actions of prior landowners subject to the contract contributed to the material breach.

(4) Whether the actions of the city or county contributed to the material breach.

(5) Whether the landowner notified the city or county that the landowner would eliminate the conditions that resulted in the material breach within 30 days, but failed to do so.

(6) The willingness of the landowner to rapidly resolve the issue of the material breach.



(7) Any other mitigating or aggravating factors that justice may require.

(l) If the landowner is ordered to eliminate the conditions that resulted in the material breach pursuant to paragraph (1) of subdivision (i) but the landowner fails to do so within the time specified by the city or county, the city or county may abate the material breach as a public nuisance pursuant to any applicable provisions of law.

(m) If the city or county terminates the contract pursuant to paragraph (2) of subdivision (i), the city or county shall record a notice of termination following the procedures of Section 51283.4.

(n) The assessment of a monetary penalty pursuant to subdivision (i) shall be secured by a lien payable to the county treasurer of the county within which the property is located, in the amount assessed pursuant to subdivision (j) or (k). Once properly recorded and indexed, the lien shall have the force, effect, and priority of a judgment lien. The lien document shall provide both of the following:

(1) The name of the real property owner of record and shall contain either the legal description or the assessor's parcel number of the real property to which the lien attaches.

(2) A direct telephone number and address that interested parties may contact to determine the final amount of any applicable assessments and penalties owing on the lien pursuant to this section.

(o) If the lien is not paid within 60 days of recording, simple interest shall accrue on the unpaid penalty at the rate of 10 percent per year, and shall continue to accrue until the penalty is paid, prior to all other claims except those with superior status under federal or state law.

(p) Upon payment of the lien, the city or county shall record a release of lien and a certificate of contract termination by breach with the county recorder for the land rendered incompatible by the breach.

(q) The city or county may deduct from any funds received pursuant to this chapter the amount of the actual costs of administering this section and shall transmit the balance of the funds by the county treasurer to the Controller for deposit in the Soil Conservation Fund.

(r) (1) The department may carry out the responsibilities of a city or county under this section if either of the following occurs:

(A) The city or county fails to determine whether there is a material breach within 210 days of the discovery of the breach.

(B) The city or county fails to complete the requirements of this section within 180 days of the determination that a material breach exists.

(2) The city or county may request in writing to the department, the department's approval for an extension of time for the city or county to

act and the reasons for the extension. Approval may not be unreasonably withheld by the department.

(3) The department shall notify the city or county 30 days prior to its exercise of any responsibility under this subdivision.

(4) This section shall not be construed to limit the authority of the Secretary of the Resources Agency under Section 16146 or 16147.

(s) (1) This section does not apply to any of the following:

(A) A building constructed prior to January 1, 2004, or permitted by a city or county prior to January 1, 2004.

(B) A building that was not a material breach at the time of construction but became a material breach because of a change in law or ordinance.

(C) A building owned by the state.

(2) Subject to paragraphs (4) and (5), this section does not apply when a board or council cancels a contract pursuant to Article 5 (commencing with Section 51280) or terminates a contract pursuant to Section 51243.5 or when a public agency, as defined by subdivision (a) of Section 51291, acquires land subject to contract by, or in lieu of, eminent domain pursuant to Article 6 (commencing with Section 51290) unless either of the following occurs:

(A) The action canceling or terminating the contract is rescinded.

(B) A court determines that the cancellation or termination was not properly executed pursuant to this chapter, or that the land continues to be subject to the contract.

(3) On the motion of any party with standing to bring an action for breach, any court hearing an action challenging the termination of a contract entered into under this chapter shall consolidate any action for breach, including the remedies for material breach available pursuant to this section.

(4) Paragraph (2) shall not be applicable for a cancellation or termination occurring after January 1, 2004, unless the affected landowner provides to the administering board or council and to the department, within 30 days after the cancellation or termination, a notarized statement, in a form acceptable to the department, signed under penalty of perjury and filed with the county recorder, acknowledging that the breach provisions of this section may apply if any of the following conditions are met:

(A) The action by the local government is rescinded.

(B) A court permanently enjoins, voids, or rescinds the cancellation or termination.

(C) For any other reason, the land continues to be subject to the contract.



(5) Paragraph (2) does not apply for a cancellation or termination occurring before January 1, 2004, unless the landowner provides the statement required in paragraph (4) prior to the approval of a building permit necessary for the construction of a commercial, industrial, or residential building.

(t) It is the intent of the Legislature to encourage cities and counties, in consultation with contracting landowners and the department, to review existing Williamson Act enforcement programs and consider any additions or improvements that would make local enforcement more effective, equitable, or widely acceptable to the affected landowners. Cities and counties are also encouraged to include enforcement provisions within the terms of the contracts, with the consent of contracting landowners.

SEC. 2. Section 51257 of the Government Code is amended to read:

51257. (a) To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and notwithstanding any other provision of this chapter, the parties may mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided that the board or council finds all of the following:

(1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.

(2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

(4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.

(5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

(6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

(7) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.



(b) Nothing in this section shall limit the authority of the board or council to enact additional conditions or restrictions on lot line adjustments.

(c) Only one new contract may be entered into pursuant to this section with respect to a given parcel, prior to January 1, 2004.

(d) In the year 2008, the department's Williamson Act Status Report, prepared pursuant to Section 51207, shall include a review of the performance of this section.

(e) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2009, deletes or extends that date.

SEC. 3. In enacting Section 2 of this bill, the Legislature finds and declares that the extension of the sunset provisions of Section 51257 of the Government Code shall not be construed as making any other change in the meaning or interpretation of Section 51257 of the Government Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

